

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Charlottesville Division**

ALBERT CLATTERBUCK,  
CHRISTOPHER MARTIN,  
EARL MCCRAW,  
JOHN JORDAN, AND  
MICHAEL SLOAN,

*Plaintiffs,*

v.

Case No.: **3:11CV00043**

CITY OF CHARLOTTESVILLE,

*Defendant.*

**RULE 37 MOTION TO DISMISS COMPLAINT OF**  
**EARL MCCRAW, JOHN JORDAN, AND MICHAEL SLOAN**

Comes now the City of Charlottesville, by counsel, and moves this Court, pursuant to Rule 37(d)(1)(ii), F.R.C.P., to enter an Order pursuant to Rule 37 (b)(2)(A)(iii & v), F.R.C.P., striking the Complaint as to claims by and dismissing the Complaint of Earl McCraw, John Jordan, and Michael Sloan on the grounds that they each have failed, after each being properly served with interrogatories under Rule 33 and a request for inspection under Rule 34 to serve answers, objections, or a written response to the discovery. In support thereof, the City of Charlottesville states as follows:

1. On April 30, 2013, the City of Charlottesville served interrogatories to each individual plaintiff, attached hereto as Exhibit "A". Answers to the interrogatories were due on or about June 3, 2013. No answers have been served by Earl McCraw, John Jordan, or Michael Sloan despite written requests to their counsel of record on June 14, 2013 and July 15, 2013.
2. On April 30, 2013, the City of Charlottesville served Request for Production of Documents to Earl McCraw, attached hereto as Exhibit "B". Responses to the Request for Production of Documents were due on or about June 3, 2013. No responses have been served by Earl McCraw, despite written requests to their counsel of record on June 14, 2013 and July 15, 2013.
3. On April 30, 2013, the City of Charlottesville served Request for Production of Documents

to John Jordan, attached hereto as Exhibit "C". Responses to the Request for Production of Documents were due on or about June 3, 2013. No responses have been served by John Jordan, despite written requests to their counsel of record on June 14, 2013 and July 15, 2013.

4. On April 30, 2013, the City of Charlottesville served Request for Production of Documents to Michael Sloan, attached hereto as Exhibit "D". Responses to the Request for Production of Documents were due on or about June 3, 2013. No responses have been served by Michael Sloan, despite written requests to their counsel of record on June 14, 2013 and July 15, 2013.
5. Pursuant to this Court's Order (Doc. #41), the deadline for completion of discovery in this case is September 6, 2013. Plaintiff McCraw's, Jordan's, and Sloan's failure to timely respond to the defendant's discovery prejudices the City of Charlottesville's ability to defend their claims.
6. The remaining two (2) plaintiffs timely responded to similar discovery requests and have now been deposed.
7. Counsel for movant certifies that he has conferred by e-mail, letter, and in person with counsel for Earl McCraw, John Jordan, and Michael Sloan.

WHEREFORE, your defendant, the City of Charlottesville, by counsel, moves this Court to enter an Order striking the Complaint as to claims by Earl McCraw, John Jordan, and Michael Sloan and dismissing the Complaint by them with prejudice and further moves the Court for such other appropriate relief under Rule 37, F.R.C.P.

CITY OF CHARLOTTESVILLE  
By Counsel

s/Richard H. Milnor  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 19<sup>th</sup> day of July, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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s/Richard H. Milnor